IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5976 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AKBARKHAN BISMILLAKHAN PATHAN

Versus

REGIONAL PASSPORT OFFICER

Appearance:

MR JAL SOLI UNWALA for the Petitioner.

MS PJ DAVAWALA for the Respondent.

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 29/07/2004

ORAL JUDGEMENT

The present petition has been preferred under Article 226 of the Constitution of India, whereby the petitioner seeks to direct the respondent to issue a

fresh or a new passport to the petitioner vide his application and file no.AHM-047971 A-024037 respectively made by the petitioner on 23.9.2003.

2. The learned counsel appearing for the petitioner submitted that though an application, much earlier in point of time was tendered to the respondent for getting a passport, the respondent authority has failed in performing its statutory duty. As and when the petitioner has visited the office of the respondent authority at Ahmedabad, nothing is given in writing except oral denial on the basis of a pendency of a criminal case against the petitioner and upon insistence of the petitioner, a letter dated 14th April, 2004 was issued. The learned counsel for the petitioner further submitted that a criminal case bearing CR No. 76 of 2002 has been registered with Kalupur Police station, Ahmedabad for the offences punishable under sections 143, 147, 148, 149, 151, 188, 336, 337, 427 and 436 of the Indian Penal Code, sections 3 and 4 of Explosive Substances Act and section 135(1) of the Bombay Police Act. As the aforesaid criminal case is pending against the petitioner, the respondent authority has orally pointed out to the petitioner that passport cannot be issued to the petitioner. The learned counsel for the petitioner further submitted that the petitioner has not committed the offence as alleged in the said FIR bearing CR No. 76 of 2002. Nonetheless, the fact remains that bail has been granted to the petitioner by the City Sessions Court, Ahmedabad vide its order dated 27th August, 2002 passed in Criminal Miscellaneous Application no. 2647 of 2002. Thus, the petitioner is on bail by the order of the City Sessions Court, Ahmedabad. No offence has been registered against the petitioner thereafter and, therefore, the petitioner is entitled to get passport and the respondent authority is duty bound to perform the statutory functions under Indian Passport Act, 1967.

3. The learned Additional Government Senior Standing Counsel appearing for the respondent submitted that as the criminal proceedings are pending against the petitioner, as per the provisions of sections 6 and 22 of the Passport Act, 1967, the respondent is not in a position to issue a passport to the petitioner. The learned counsel for the respondent also placed reliance on the notifications dated 16th August, 1979 and 25th August, 1993 issued by the Central Government. It is submitted on behalf of the respondent in pursuance of the aforesaid two notifications also, the petitioner is not entitled to get the passport and therefore, there is no

breach of duty committed by the respondent authority. Hence, there is no substance in this petition and it deserves to be dismissed.

4. I have perused the case papers and the facts of the case. It is an admitted position that a criminal case as referred to above is pending against the petitioner and bail has also been granted to the petitioner by the competent court. The certified copy of the bail order passed by the City Sessions Court, Ahmedabad has been placed on record by the learned counsel for the petitioner. The learned counsel for the petitioner has also relied upon the judgment delivered by this Court in the case of Dhiren Baxi vs. Regional Passport Officer, reported in 23(1) GLH, page-1, wherein para-10 inter alia provides as under:

" Considering the aforesaid notification issued by the Central Government, as well as considering the judgment of the Bombay High Court, in my view, this petition is required to be allowed by giving opportunity to the petitioner to approach the concerned Magistrate with an appropriate application for permitting him to go abroad for a particular time limit. If the concerned Magistrate permits the petitioner to go abroad for a particular period on the basis of such order, it will be open for the petitioner to request the Passport Authority to grant him passport for a limited period during which he is permitted to go abroad. The petitioner may accordingly approach the concerned Criminal Court, with a prayer to permit him to go abroad and if any such application is preferred, the concerned Criminal Court may decide such application in accordance with law. If the concerned Criminal Court, before whom the criminal cases are pending, permits the petitioner to go abroad, the Passport Authority may pass appropriate order in the matter of issuing passport to the petitioner in terms of the order of the Criminal Court and subject to the conditions laid down by the Notification. As observed by the Bombay High Court, the Passport Authority, in future cases of a similar nature, may inform the applicants, against whom any criminal case is pending about the Notification of the Central Government and may inform such applicant that they may approach the concerned Criminal Court for permitting such applicant to go abroad and if any such order is passed by the Magistrate, permitting such applicant to go abroad, the Passport Authority may dispose of such applications in view of the Notification and in view of the provisions of the Passport Act. It is clarified that in case the Criminal Court permits the petitioner to go abroad, the Passport

Authority shall act on the basis of such report for the purpose of issuing passport. The passport may not be refused solely on the ground of pendency of the present criminal cases in case the Magistrate so permits. It is clarified that if there are other grounds available to the passport authority to refuse the passport, it is for the authority to consider the same in accordance with law. The passport may not be refused solely relying on the present criminal cases, which are pending against the petitioner, in case permission is granted by the Magistrate, as indicated above. It is also clarified that whether such application should be granted or not is within the jurisdiction of the competent Criminal Court and it is for the concerned Magistrate to decide such application, if at all the same is received from the present petitioner and it is for the Magistrate to decide the same in accordance with law and this Court has not expressed any opinion on the aforesaid subject."

5. In view of the aforesaid judgment delivered by this Court, the petitioner is directed to approach the competent criminal court for a permission to leave India. If such an application is moved by the petitioner, the same will be decided by the trial court in accordance with law, as early as possible and practicable and preferably within a period of two weeks from the date of the application preferred by the petitioner. If the trial court grants permission to the petitioner to leave India, then in such a situation, the respondent authority shall issue a passport to the petitioner for a period for which the petitioner is allowed to leave India, within a period of two weeks from the date of receipt of certified copy of the judgment of the trial court. Rule made absolute accordingly with no order as to costs.

(D.N.Patel,J)

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